

Before the  
Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Stale or Moot Docketed Proceedings	)	
	)	
1993 Annual Access Tariff Filings	)	CC Docket No. 93-19;
Phase I	)	
	)	
1994 Annual Access Tariff Filings	)	CC Docket No. <u>93-65</u>
	)	
AT&T Communications Tariff F.C.C. Nos. 1 and	)	CC Docket No. 93-193
2. Transmittal Nos. 5460, 5461, 5462, and 5464	)	
Phase II	)	
	)	
Bell Atlantic Telephone Companies Tariff F.C.C.	)	CC Docket No. 94-157
No. 1. Transmittal No. 690	)	
	)	
NYNEX Telephone Companies Tariff	)	
F.C.C. No. 1. Transmittal No. 328	)	

### ORDER, NOTICE, AND ERRATUM

Adopted: February 25, 2003

Released: February 25, 2003

Direct Case Due by: April 11, 2003

Oppositions to Direct Case Due by: May 12, 2003

Rebuttal Due by: May 27, 2003

Comments Due: No later than 28 days after the publication of this Notice in the Federal Register

Reply Comments Due: No later than 14 days after the comments are due

By the Chief, Wireline Competition Bureau:

### I. INTRODUCTION

1. On June 30, 1995, the Common Carrier Bureau (Bureau) designated for investigation issues in three related tariff proceedings involving claims for exogenous treatment under price cap regulation of amounts associated with implementation of Statement of Financial Accounting Standards 106 (SFAS-106).<sup>1</sup> SFAS-106 addressed, *inter alia*, the accounting treatment of "other postretirement

<sup>1</sup> 1993 Annual Access Tariff Filings, CC Docket No. 93-193, 1994 Annual Access Tariff Filings, CC Docket No. 94-65, AT&T Communications Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460, 5461, 5462, and 5464, CC Docket No. 93-193, Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690, CC Docket No. 94-157, Order Designating Issues for Investigation, 10 FCC Rcd 11804 (Com. Car. Bur. 1995) (Combined OPEB

(continued...)

employee benefits' or "OPEBs." In its *Combined OPEB Investigations Order*, the Bureau designated CC Docket No. 94-157 as the docket number for the combined investigation of these issues.<sup>2</sup>

2. After a period of inactivity in CC Docket No. 94-157, on December 21, 2001, the Commission adopted an order that terminated stale or moot docketed proceedings. The Commission stated, with respect to a list of proceedings included in an appendix, that "[t]he matters at issue in these proceedings were resolved by the issuance of final orders that were not subject to judicial review, or if subject to judicial review, were affirmed and the court's mandate was issued." CC Docket No. 94-157 was among the 119 proceedings listed. Neither AT&T nor any other carrier sought review of the *Termination Order* as it related to CC Docket No. 94-157.

3. The present Order, Notice, and Erratum reinstates CC Docket No. 94-157, which was terminated in error, in order to address outstanding issues that are still in dispute, including an issue that AT&T recently brought to our attention. We direct Vericon Communications to submit its direct case and studies upon which it relies to demonstrate that OPEB-related costs incurred prior to January 1, 1993 are eligible for exogenous treatment. We also seek to refresh the record pertaining to OPEB issues discussed in the *1996 Tariff Order*.<sup>4</sup>

4. With respect to other OPEB issues under investigation in CC Docket No. 94-157, CC Docket No. 94-65, and CC Docket No. 93-193, we request that parties with interest in other OPEB issues under investigation in these dockets (whether or not described below) inform the Bureau of any issue that remains open. If we receive no timely comments in response to this notice, we will terminate our OPEB investigation in CC Docket No. 94-63 and CC Docket No. 93-193 without further action. We note that, absent timely comments in response to this notice, we will also limit our further action in Docket No. 94-157 to two specific issues: (1) the issue B in the *Combined OPEB Investigations Order* (whether LECs may treat as exogenous the SFAS-106 costs they incurred prior to January 1, 1993); (2) the issues regarding rate base treatment of OPCBs discussed in the *1996 Tariff Order*.

## II. BACKGROUND

5. In December 1990, the Financial Accounting Standards Board (FASB) adopted SFAS-106. For companies that follow generally accepted accounting principles (GAAP), SFAS-106 established new financial accounting and reporting requirements for accounting periods beginning after December 15, 1992, for any employer offering postretirement benefits other than pensions to its employees. This category of benefits, OPEBs, typically consists of health and dental care benefits and life insurance.

6. Before the adoption of SFAS-106, regulated local exchange carriers (LECs) and AT&T accounted for OPEBs on a "pay-as-you-go" or cash basis, recognizing as expenses the amounts actually paid on behalf of retired employees in the current accounting period. SFAS-106 requires companies to account for OPCBs on an accrual basis, treating these benefits as a form of deferred compensation earned

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*Investigations Order*) The present Wireline Competition Bureau was known as the Common Carrier Bureau until 2002.

See *id.* at 11817, para. 32.

<sup>2</sup> *Termination of Stale or Moot Docketed Proceedings*, Order, 17 FCC Rcd 1199 (2002) (*Termination Order*):67 Fed. Reg. 3617 (Jan. 25, 2002).

<sup>4</sup> See 1996 Annual Access Tariff Filings; National Exchange Carrier Association Universal Service Fund and Lifeline Assistance Rates; NYNEX Telephone Company Petition to Advance the Effective Date of the 5.3 X-Factor to January 1, 1995, Transmittal No. 710, Memorandum Opinion and Order, 11 FCC Rcd 7564 (Com. Car. Bur. 1996) (*1996 Tariff Order*). See also paras. 13-15, *infra*, for detailed discussion of OPEB issues in the *1996 Tariff Order*.

by employees during their working years. Thus, SFAS-106 requires recognition of the costs of OPEBs during the years the employees earn the benefits before they retire, rather than during the years when the company actually pays benefits.

7. The new accounting standard in SFAS-106 created two categories of OPEB expenses, "ongoing amounts" and the "transitional benefit obligation" (TBO). The "ongoing amount" represents the yearly expense that a firm recognizes as its current employees earn benefits that will be paid after they retire. SFAS-106 also requires companies to "book" (i.e., to recognize on their financial records) the amount of their unfunded obligation for OPEBs to retirees and to active employees existing as of the date of their implementation of SFAS-106. This unfunded obligation, referred to as the TBO, reflects the amount that a company would have accrued on its books as of the effective date of the accounting change if it had been operating under the accrual method.<sup>5</sup> SFAS-106 permits companies whose benefits plans have active participants either to recognize the TBO as an immediate expense or to amortize it over the average remaining service years of plan participants. If the average remaining service period is less than 20 years, SFAS-106 permits the employer to use a 20-year period rather than an average period.

8. In December 1991, the Bureau, under delegated authority, issued an order approving the requests of two LECs to adopt SFAS-106-type accounting for OPEBs, on or before January 1, 1993.<sup>6</sup> The Bureau declined, however, to allow LECs and AT&T to adopt the SFAS-106 option of immediately recognizing the full TBO, because the amounts involved were so large that accounting for them as one-time expenses would have distorted the LECs' earnings during the affected period. Instead, the Bureau required the carriers to use the other SFAS-106 option of amortizing the TBO expense over either a 20-year period or the average remaining service period of active plan participants.<sup>7</sup>

9. On May 4, 1992, the Bureau released Responsible Accounting Officer Letter No. 20 (K O 20) to provide carriers with accounting and ratemaking instructions for OPEBs in a manner consistent with SFAS-106.<sup>8</sup> RAO 20 identified the Part 32 accounts that carriers must use to record OPEB costs under SFAS-106.<sup>9</sup> It directed the LECs to exclude accrued OPEB liabilities recorded in USOA Account 4310 from their interstate rate base and to include prepaid OPEB benefits recorded in USOA Account 1410 in their interstate rate base.<sup>10</sup>

10. After the Bureau required AT&T and the LECs to conform their regulatory accounting practices to SFAS-106, several LECs subject to price cap regulation filed tariff transmittals in 1992 that sought exogenous treatment for the change in OPEB costs.<sup>11</sup> The Bureau suspended the 1992 transmittals

<sup>5</sup> SFAS-106 defines the TBO as "the unrecognized amount, as of the date this Statement is initially applied, of (a) the accumulated postretirement benefit obligation in excess of (b) the fair value of plan assets plus any recognized accrued postretirement benefit cost or less any recognized prepaid postretirement benefit cost."

<sup>6</sup> See *Southwestern Bell Corporations GTE Service Corporation, Notification of Intent to Adopt Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions*, 6 FCC Rcd 7560 (Conn. Car. Bur. 1991).

<sup>7</sup> *Id.* See also *Uniform Accounting for Postretirement Benefits Other Than Pensions in Part 32*, 7 FCC Rcd 2872 (Accounting and Audits Division, Conn. Car. Bur. 1992) (RAO Letter 20).

<sup>8</sup> See *RAO Letter 20*, 7 FCC Rcd at 2871. See also *1996 Tariff Order*, 11 FCC Rcd at 7367, para. 5.

<sup>9</sup> See *R.40 Letter 20*, 7 FCC Rcd at 2872.

<sup>10</sup> *Id.*

<sup>11</sup> See *Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 497* (filed Feb. 28, 1992); *US West Communications, Inc. Tariff F.C.C. Nos. 1 and 4, Transmittal No. 246* (filed Apr. 3, 1992); and *Pacific Bell Tariff F.C.C. No. 129, Transmittal No. 1579* (filed Apr. 16, 1992). The "Price Cap Index" or "PCI" serves as an upper limit on rates. This index is adjusted annually for productivity, inflation (GNP-PI) and other factors, including exogenous adjustments.

for five months and set them for investigation.<sup>12</sup> The Bureau made all price cap regulated LECs subject to this investigation. On January 22, 1993, in its *OPEB Order*, the Commission terminated the investigation and denied the LECs' requests for exogenous treatment of OPEBs.<sup>13</sup>

11. In the *OPEB Order*, the Commission addressed the two types of OPEBs separately. With respect to the OPEB amounts accruing after the SFAS-106 change -- the ongoing amounts -- the Commission found that LECs have substantial control over the level of OPEB expenses. Accordingly, the Commission found that, with regard to the ongoing amounts, the LECs failed the first prong of the test for exogenous cost treatment which required that a cost be outside of a carrier's control." With regard to the TBO amounts, the Commission stated that it did not have to resolve the control issue because the LECs had failed to establish that the TBO had not affected the economy generally (and was therefore not already accounted for the GNP-PI portion of the price cap formula) -- the second prong of the test." Finally, the Commission indicated that it might further consider exogenous treatment of the TBO amounts based on a better and more complete record and suggested the annual 1993 access tariff filings as a possible forum for such consideration.<sup>16</sup> Accordingly, in the 1993 annual access tariff filings, several LECs included adjustments to their price cap indices and rates based on exogenous treatment of certain TBO amounts. Effective July 1, 1993, AT&T also revised its price cap indices to reflect the LECs' proposed changes in access prices and to include adjustments for exogenous treatment of its own TBO amounts.<sup>17</sup> The Commission suspended both the LECs' and AT&T's transmittals for one day and imposed an accounting order.<sup>18</sup> The Commission designated the LEC portion of the investigation as

<sup>12</sup> *Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions,"* CC Docket No. 92-101, Order of Investigation and Suspension, 7 FCC Rcd 7721 (Com. Car. Bur. 1992). The Bureau designated the following issues for investigation:

- (1) whether the LECs had demonstrated that implementing SFAS-106 results in an exogenous cost change under the Commission's price cap rules; and
- (2) if these cost changes were treated as exogenous, whether:
  - (a) costs associated with implementation of SFAS-106 prior January 1, 1993 (when the accounting change becomes mandatory) should be treated as exogenous;
  - (b) the assumptions made by the individual LECs in calculating these costs were reasonable;
  - (c) given these assumptions, the individual LECs had correctly computed the exogenous cost changes; and
  - (d) the individual LEC allocations of these costs among their price cap baskets complied with Commission rules

*Id.* at 2725-26, para. 10.

<sup>13</sup> *Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions,"* CC Docket No. 92-101, Memorandum Opinion and Order, 8 FCC Rcd 1024 (1993) (*OPEB Order*). This order directed Bell Atlantic, US West and Pacific Bell to file tariff revisions removing the OPEB costs from the calculation of their PCI. *Id.* at 1037, para. 75.

<sup>14</sup> *See OPEB Order*, 8 FCC Rcd at 1033, paras. 53-56. *See also* 47 C.F.R. § 61.45(d) (1993).

<sup>15</sup> *See OPEB Order*, 8 FCC Rcd at 1033-34, paras. 57-50, *See also* 47 C.F.R. § 61.45(d) (1993).

<sup>16</sup> *See OPEB Order*, 8 FCC Rcd at 1037, para. 75.

<sup>17</sup> *AT&T Communications Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460, 5461, 5462, and 5464*, Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation, 8 FCC Rcd 6227 (Com. Car. Bur. 1993) (*AT&T OPEB Investigation Order*).

<sup>18</sup> *See 1993 Annual Access Tariff Filings*, CC Docket No. 93-193, *National Exchange Carrier Association, Transmittal No. 556, Universal Service Fund and Lifeline Assistance Rates*, CC Docket No. 93-123, *GSA Order Compliance Filings, Bell Operating Companies Tariffs for the 800 Service Management System and 800 Data Base Access Tariffs*, CC Docket No. 93-129, Memorandum Opinion and Order Suspending Rates and Designating Issues

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"Phase I" and the AT&T portion of the investigation as "Phase II."<sup>19</sup>

13. On July 12, 1994, the U.S. Court of Appeals for District of Columbia Circuit reversed and remanded the *OPEB Order*, concluding that changes in LEC OPEB costs caused by the implementation of SFAS-106 were eligible for exogenous treatment under the Commission's then existing rules.<sup>20</sup> Accordingly, the Court directed the Commission to grant exogenous treatment for OPEB-related costs. Because the carriers had withdrawn the tariffs that were the subject of the *OPEB Order*, and no tariffs remained pending in the remanded CC Docket No. 92-101, the Commission vacated the *OPEB Order* and terminated the CC Docket No. 92-101 proceeding.<sup>21</sup> In response to the Court's reversal of the *OPEB Order*, however, the Bell Atlantic Telephone Companies (Bell Atlantic) and NYNEX Telephone Companies (NYNEX) filed tariff revisions that sought exogenous treatment of SFAS-106 amounts that they had not previously claimed.<sup>22</sup> The Bureau suspended these tariffs for one day, imposed an accounting order, and initiated an investigation.<sup>23</sup>

13. In April 1995, in its *Performance Review Order*, the Commission adopted new economic cost standards for exogenous treatment of accounting changes.<sup>24</sup> In applying the new standards to SFAS-106, the Commission again rejected exogenous treatment of OPEB related costs.<sup>25</sup> The Commission noted, however, that the new standards would operate on a prospective basis only and would not affect the pending investigations of exogenous claims associated with implementation of SFAS-106 in CC Docket No. 93-193 and CC Docket No. 94-157.<sup>26</sup>

14. On June 30, 1995, the Bureau consolidated the above-mentioned three separate pending investigations of exogenous claims (in CC Docket No. 93-193 and CC Docket No. 94-157) into a single proceeding, designating CC Docket No. 91-157 as the docket number for this investigation.<sup>27</sup> As

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for Investigation, 8 FCC Rcd 4960 (Com. Car. Bur. 1993) (*1993 Annual Access Investigation Order*); *AT&T OPEB Investigation Order*, 8 FCC Rcd at 6227.

<sup>19</sup> *AT&T OPEB Investigation Order*, 8 FCC Rcd at 6227.

<sup>20</sup> *Southwestern Bell Telephone Company v. FCC*, 28 F.3d 165 (D.C. Cir. 1994).

<sup>21</sup> *Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions"*, CC Docket No. 92-101, Memorandum Opinion and Order, 10 FCC Rcd 11821 (1995).

<sup>22</sup> See *Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690*, *NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328*, *Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1738* and *US West Communications, Transmittal No. 550*, CC Docket No. 94-157, Memorandum Opinion and Order, 10 FCC Rcd 1594 (Com. Car. Bur. 1994) (*Bell Atlantic/NYNEX Investigation Order*).

<sup>23</sup> *Id.*

<sup>24</sup> *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9090-97, paras. 293-309 (1995) (*Performance Review Order*). The *Performance Review Order* amended the Commission's rules to preclude price cap index adjustments for accounting changes that involve no changes in economic cost "expected to affect prices." See *id.* at 9090, para. 293. Applying the new rule in the *Performance Review Order*, the Commission ordered the price cap indices reduced prospectively, in order to preclude recovery of future, amortized installments of OPEB costs. See *id.* at 9095-97, paras. 306-309.

<sup>25</sup> *Performance Review Order*, 10 FCC Rcd at 9096-97, paras. 306-309.

<sup>26</sup> *Performance Review Order*, 10 FCC Rcd at 9096-97, paras. 306-309. See also *Bell Atlantic Telephone Cos. v. FCC*, 79 F.3d 1195 (D.C. Cir. 1996).

<sup>27</sup> See *Combined OPEB Investigations Order*, 10 FCC Rcd at 11817, para. 32.

discussed above, the first investigation examines several issues relating to the 1993 annual access tariffs,<sup>28</sup> including the LECs' claims for exogenous treatment of the TBO portion of SFAS-106.<sup>29</sup> The second investigation involves certain AT&T transmittals that proposed rates designed to recover LEC access charges that included the LECs' SFAS-106 costs, as well as AT&T's own SFAS-106 amounts.<sup>30</sup> The third investigation in the *Combined OPEB Investigations Order* involves proposed tariff revisions filed by Bell Atlantic and NYNEX, which sought exogenous treatment of SFAS-106 amounts not previously claimed.<sup>31</sup> In addition, the Bureau included four additional proposed tariff revisions in CC Docket No. 94-157.<sup>32</sup> In each of the orders initiating these OPEB tariff investigations, the Bureau suspended the tariffs for one day and imposed accounting orders in the event the carriers' proposed rates were later found to be unreasonable.<sup>33</sup>

15. On March 7, 1996, the Commission rescinded the portion of RAO 20 that addressed the

<sup>28</sup> See 1993 Annual Access Investigation Order, 8 FCC Rcd 4960.

<sup>29</sup> The 1993 Annual Access Investigation Order also includes an investigation of Rochester Telephone Corporation, Tariff F.C.C. No. 1, Transmittal No. 727, for SFAS-106 TBO amounts that were suspended by the Bureau for one day in the 1994 annual access tariff order. See 1994 Annual Access Tariff Filings, CC Docket No. 94-63, Memorandum Opinion Order Suspending Rates, 9 FCC Rcd 3519 (Com. Car. Bur. 1994) (1994 Annual Access Investigation Order I); 1994 Annual Access Tariff Filings, CC Docket No. 94-65, Memorandum Opinion and Order Suspending Rates, 9 FCC Rcd 3705 (Com. Car. Bur. 1994) (1994 Annual Access Investigation Order II).

<sup>30</sup> See AT&T OPEB Investigation Order, 5 FCC Rcd 6227.

<sup>31</sup> See Bell Atlantic NYNEX Investigation Order, 10 FCC Rcd 1594.

<sup>32</sup> The Bureau included the following four tariff filings in the investigation: *Bell Atlantic Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 747*, CC Docket Nos. 94-139 and 94-157, Memorandum Opinion and Order Suspending Rates, 10 FCC Rcd 5077 (Tar. Div., Com. Car. Bur. 1995); *Pacific Bell, Tariff F.C.C. No. 128, Transmittal No. 1773* and *US West, Tariff F.C.C. No. 5, Transmittal No. 584*, CC Docket No. 94-157, Memorandum Opinion and Order Suspending Rates, 10 FCC Rcd 6038 (Tar. Div., Com. Car. Bur. 1995); *The NYNEX Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 374*, CC Docket No. 94-157, Memorandum Opinion and Order Suspending Rates, DA 95-966 (Tar. Div., Com. Car. Bur., rel. Apr. 27, 1995).

<sup>33</sup> In the *Combined OPEB Investigations Order*, the Bureau designated the following issues for investigation:

(A) whether AT&T and the individual LECs correctly, reasonably and justifiably calculated the gross amount of SFAS-106 costs that may be subject to exogenous treatment under price cap regulation;

(B) whether exogenous claims should be permitted for SFAS-106 costs incurred prior to January 1, 1993, the Commission's date for mandatory compliance;

(C) whether AT&T and the individual LECs have correctly and reasonably allocated and separated amounts associated with implementation of SFAS-106 in accordance with the Commission's rules and Responsible Accounting Officer (RAO) letters;

(D) how Voluntary Employee Benefit Association (VEBA) trusts or other funding mechanisms should be treated:

(1) if implemented before price caps.

(2) if implemented after price caps, but before the change required by SFAS-106; and

(3) if implemented after the change in accounting required by SFAS-106;

(E) whether exogenous cost treatment for SFAS-106 amounts should be limited to costs that are funded;

(F) whether exogenous treatment should be given only for amounts associated with employee interests that have vested; and

(G) how the deferred tax benefit applicable to OPEBs should be treated for purposes of exogenous adjustments.

See *Combined OPEB Investigations Order*, 10 FCC Rcd at 11812-15, paras. 16-23.

rate base treatment of OPEB related costs." The Commission found that **RAO 20** exceeded the Bureau's delegated authority under 47 C.F.R. § 52.17 to the extent that it directed exclusions from, and additions to, a LEC's interstate rate base that are not specifically authorized by Part 65 of the Commission's rules.<sup>34</sup> The Commission specifically emphasized that its decision to order such rescission was based on procedural grounds and not on the substantive merits of the ratemaking practices at issue.<sup>35</sup>

16. In response to the *RAO Rescission Order*, the LECs proposed to increase their PCIs for the 1996-1997 tariff period by adjusting their rate base treatment of OPEBs for certain prior years, resulting in reduced sharing obligations for those periods.<sup>36</sup> Thus, in filing their 1996 annual access tariff, Ameritech, Bell Atlantic, BellSouth, Nevada Bell, Pacific Bell, Southwestern Bell, U S West, Lincoln Telephone, GTE, and Sprint LTCs amended their Price Cap Regulation Rate of Return Monitoring Report (FCC Form 492A) to include accrued OPEB costs in their interstate rate bases.<sup>37</sup> The inclusion of accrued OPEB costs increased the LECs' interstate rate bases, thereby lowering the reported rates of return and decreasing their calculated price cap sharing obligations.<sup>38</sup> Reduced sharing obligations resulted in higher PCIs.<sup>39</sup> Ameritech amended its FCC Form 492A to reflect OPEB liability costs accrued in the interstate rate base in 1992-1994; Bell Atlantic, Pacific Bell, Southwestern Bell, and Lincoln Telephone amended their earnings reports to reflect OPEB costs in 1993, 1994, and 1995.<sup>40</sup> U S West amended its FCC Form 492A to include OPEB costs accrued in 1993, 1994, and 1995.<sup>41</sup>

17. In a June 23, 1996 order, the Bureau found that "the LECs' rate base treatment of OPEBs raise[s] a substantial question of lawfulness under existing rules that warrants investigation."<sup>42</sup> The Bureau also agreed with AT&T that "the LECs . . . failed to document and explain the derivation of the rate base adjustments underlying the [proposed tariff] revisions."<sup>43</sup> The Bureau determined that it would investigate the extent to which the LECs were seeking to include OPEB costs in their rate bases while simultaneously seeking exogenous treatment for the same costs.<sup>44</sup> The Bureau suspended the LEC tariffs, imposed an accounting order, and initiated an investigation.<sup>45</sup>

18. After a period of inactivity, in December 2001, the Commission adopted an order that

<sup>34</sup> *Responsible Accounting Officer Letter 20, Uniform Accounting for Postretirement Benefits Other than Pensions in Part 12*, CC Docket No. 96-27, Memorandum Opinion Order and Notice of Proposed Rule Making, 11 FCC Rcd 2957 (1996) (*RAO Rescission Order*).

<sup>35</sup> *Id.* at 2961, para. 25.

<sup>36</sup> *Id.* at 2961, para. 27.

<sup>37</sup> See *1996 Tariff Order*, 11 FCC Rcd at 7568, para. 7.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 7573, para. 19.

<sup>44</sup> *Id.*, para. 20.

<sup>45</sup> *Id.* at 7574, para. 21. The Bureau stated that, "[s]ince the issue of rate base treatment of OPEB costs claimed for the 1992-1993 period is similar to the issue before us in our investigation of CC Docket 93-193, we add the tariff revisions filed by Ameritech, Bell Atlantic, U S West, Pacific Bell, Southwestern Bell, and Lincoln to that investigation." *Id.*

<sup>46</sup> *Id.* at 3566-67, para. 4, 7573-74, para. 20-21.

terminated stale or moot docketed proceedings. The Commission stated, with respect to a list of proceedings included in an appendix, that "[t]he matters at issue in these proceedings were resolved by the issuance of final orders that were not subject to judicial review, or if subject to judicial review, were affirmed and the court's mandate was issued."<sup>47</sup> CC Docket No. 94-157 was among the 119 proceedings listed.<sup>48</sup> Neither AT&T nor any other carrier sought review of the *Termination Order* as it related to CC Docket No. 94-157.<sup>49</sup> Almost a year later, in an October 2002 meeting, AT&T urged the Bureau's Pricing Policy Division to take actions on specific issues involving OPEB cost claims.<sup>50</sup> One issue, also known as "issue B" in the *Combined OPEB Investigations Order*, involves whether LECs may treat as exogenous the SFAS-IO6 costs they incurred prior to January 1, 1993, the date on which the Commission's rules required implementation of SFAS-IO6.<sup>51</sup> AT&T believes that Bell Atlantic was the only LEC that requested exogenous treatment of OPEB costs for periods prior to January 1, 1993, and AT&T objects to Bell Atlantic's exogenous claims for calendar years 1991 and 1992.<sup>52</sup> Another issue involves the proper rate base treatment of OPEBs discussed in the *1996 Tariff Order*.<sup>53</sup>

### III. DISCUSSION

19. In the *Combined OPEB Investigations Order*, the Bureau designated certain issues for investigation, including issues relating to calculation of the specific amount of OPEB-related costs that are eligible for exogenous treatment and issues involving eligibility for exogenous treatment of certain OPEB-related costs (such as Voluntary Employee Benefit Association trusts and costs incurred prior to January 1, 1993).<sup>54</sup> As stated above, the *Combined OPEB Investigations Order* designates CC Docket No. 94-157 as the docket number for all the OPEB-related issues.<sup>55</sup> We note that the Commission also intended to resolve all other subsequent OPEB issues, including the proper rate base treatment of OPEBs discussed in the *1996 Tariff Order*, in the same combined OPEB proceeding.<sup>56</sup>

<sup>47</sup> *Termination Order*, 17 FCC Rcd 1199 (2002); 67 Fed. Reg. 3617 (Jan. 25, 2002).

<sup>48</sup> *Termination Order*, 17 FCC Rcd 1199 (2002).

<sup>49</sup> We note that at least two other dockets with pending issues were terminated in the same *Termination Order*. See *Termination of Stale or Moot Docketed Proceedings, Erratum*, 17 FCC Rcd 4543 (Com. Car. Bur. 2002) (*Termination Order Erratum*). One of those dockets, CC Docket No. 96-198, was a rulemaking in which the Commission had not ruled on reconsideration petitions of AT&T and other parties. AT&T filed a timely petition for judicial review of the *Termination Order* on the grounds that the Commission could not lawfully terminate the rulemaking proceeding without disposing of the merits of its reconsideration petition. See *AT&T Corp. v. FCC*, D.C. Cir. No 02-1081 (1002). In the *Termination Order Erratum*, the Bureau concluded that the termination of that rulemaking was an inadvertent, technical error and reinstated CC Docket No. 96-198. See *Termination Order Erratum*, 17 FCC Rcd 4543, para. 2.

<sup>50</sup> See Letter from Patrick H. Merrick, Director, AT&T Federal Government Affairs, to Marlene H. Dortch, Secretary, FCC, filed October 23, 2002 (*AT&T Oct. 23, 2002 Ex-Parte Letter*).

<sup>51</sup> *Combined OPEB Investigations Order*, 10 FCC Rcd at 11813, para. 19. See also *id.* at 11812-15, paras. 16-23 (other issues designated for investigation).

<sup>52</sup> See *AT&T Oct. 23, 2002 Ex-Parte Letter*.

<sup>53</sup> *Id.* See also *1996 Tariff Order*, 11 FCC Rcd 7567.

<sup>54</sup> See footnote 31, *supra*, for more detail. See also *Combined OPEB Investigations Order*, 10 FCC Rcd at 11812-15, paras. 16-23.

<sup>55</sup> See *Combined OPEB Investigations Order*, 10 FCC Rcd at 11817, para. 32.

<sup>56</sup> The Commission has consistently treated the OPEB issues raised in CC Docket 93-193 as part of a group of issues that should be addressed together. For example, by order dated April 17, 1997, the Commission expressly declined "to address issues related to claims for exogenous treatment under price cap regulation of amounts associated with the implementation of [SFAS-106] relating to [OPEBs]." *In the Matter of 1993 Annual Access Tariff Filings, GSF* (continued....)



20. Issue B, in the *Combined OPEB Investigations Order*, (i.e., whether LECs may treat as exogenous the SFIS-106 costs they incurred prior to January 1, 1993, the Commission's date for mandatory compliance) remains in dispute.<sup>57</sup> The issues regarding rate base treatment of OPEB discussed in the *1996 Tariff Order* also remain unresolved.<sup>58</sup>

21. The text of the *Termination Order* states that "none of the [tertiinoted] dockets have any outstanding issues."<sup>59</sup> Further, the *Termination Order* states that "the matters at issue in these [terminated] proceedings were resolved by the issuance of final orders that were not subject to judicial review."<sup>60</sup> The appendix of the *Termination Order* explicitly lists CC Docket 94-157 as one of the dockets terminated by that order. Because certain issues in CC Docket 94-157 remain unresolved, we conclude that the inclusion of CC Docket 94-157 in the appendix of the *Termination Order* was an inadvertent technical error, and the Commission never intended to terminate the OPEB tariff investigation in this docket."

22. By this Order, Notice, and Erratum, we reinstate the investigation in CC Docket No. 94-157 to address AT&T's objections concerning treatment of OPEB related costs for calendar years 1991 and 1992, as well as OPEB-related issues discussed in the *1996 Tariff Order*. Because the record may be stale, we seek to refresh the record. Considering that some of the parties subject to this investigation have merged,<sup>62</sup> we note that the old record may not accurately reflect the successor parties' current positions. In addition, we want to give interested parties the opportunity to provide new evidence, as appropriate, in light of the time that has passed. Accordingly, parties should state in full their arguments on these issues, rather than merely incorporating by reference arguments stated in their earlier filings in this once terminated docket. Parties should also identify clearly the portions of their previous filings that are no longer relevant, as well as those that remain relevant, and why.

23. With respect to issue B, in the *Combined OPEB Investigations Order*, we direct Verizon Communications<sup>63</sup> to submit its direct case and studies upon which it relies to demonstrate that OPEB-related costs incurred prior to January 1, 1993 are eligible for exogenous treatment. As discussed above,

( continued from previous page)

*Order Compliance Filings, In the Matter of 1994 Annual Access Tariff Filings, In the Matter of 1995 Annual Access Tariff Filings, In the Matter of 1996 Annual Access Tariff Filings*, CC Docket 93-19, Phase I, Part 3, CC Docket 94-65, Memorandum Opinion and Order, 12 FCC Rcd 6277, 6280, para. 7 n.6 (1997). The Commission noted that "the OPEB issues" would be addressed in a separate proceeding and cited to, among other things, a clause in the *Combined OPEB Investigations Order* that "designated the SFIS-106 portion of the 1993 Annual Access Order as Phase I, Part I" of the investigation. *Id.*

<sup>57</sup> See AT&T Oct. 23, 2002 Ex-Parte Letter.

<sup>58</sup> See *id.* 1996 *Tariff Order*, 11 FCC Rcd at 7573-74, paras. 19-21.

<sup>59</sup> See *Termination Order*, 17 FCC Rcd at 1199, para. 1.

<sup>60</sup> *Id.*

<sup>61</sup> See *Termination Order Erratum*, 17 FCC Rcd at 4543-44 (reinstating two other proceedings with pending issues).

<sup>62</sup> See, e.g., *Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee for Consent to Transfer Control of NYNEX Corporation and its subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985 (1997); *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000).

<sup>63</sup> When Bell Atlantic Corporation and GTL Corporation merged into one company, they named it Verizon Communications (Verizon). See [http://www.fcc.gov/web/urms/COSA\\_History/vctr.htm](http://www.fcc.gov/web/urms/COSA_History/vctr.htm); [http://investor.verizon.com/profile/history\\_001.html](http://investor.verizon.com/profile/history_001.html)

Verizon should state in full its arguments, rather than merely incorporating by reference arguments stated in Bell Atlantic's earlier filings. Parties should also identify clearly the portions of their previous filings that are no longer relevant, as well as those that remain relevant, and why.

24. With respect to issues regarding rate base treatment of OPEB's discussed in the *1996 Tariff Order*, interested parties may file comments in response to this Order, Notice, and Erratum to reflect in the record. Parties should also identify clearly the portions of their previous filings that are no longer relevant, as well as those that remain relevant, and why. We note that the specific issues that will be the subject of the investigation will be identified in a future designation order. We may also identify issues in that order that do not warrant further investigation.

25. Finally, with respect to other OPEB issues under investigation in CC Docket No. 94-157, CC Docket No. 94-65, and CC Docket No. 93-193, we request that parties with interest in such issues (whether or not described above) inform the Bureau of any issue that remains open. If we receive no timely comments in response to this order, we will terminate our OPEB investigation in CC Docket No. 93-65 and CC Docket No. 93-193 without further action. Additionally, absent timely comments in response to this order, we will limit our further action in Docket No. 93-157 to the two specific issues described in paragraph 18 above, and we will similarly terminate that docket once we have resolved those issues. Termination of issues no longer in dispute serves the public interest because it reduces the uncertainty to which carriers are subject in their normal operations, and it permits both carriers and the Commission to devote their resources more efficiently to other matters of significance.

#### IV. PROCEDURAL MATTERS

##### A. Filing Schedules

26. This Order, Notice, and Erratum combines all OPEB investigations into one investigation, and this investigation is designated CC Docket No. **93-157**.

27. Verizon shall file its direct case on issue B, designated in the *Combined OPEB Investigations Order*, no later than 45 days after release of this Order, Notice, and Erratum. Pleadings responding to the direct case must be captioned "Opposition to Direct Case" or "Comments on Direct Case" and may be filed no later than 30 days after the direct case is filed. Verizon may file a "rebuttal" to oppositions no later than 15 days after the oppositions are filed.

38. Interested parties may file comments on other OPEB issues, as discussed in paragraphs 24 and 25 above, no later than 28 days after the publication of this Order, Notice, and Erratum in the Federal Register. Reply comments are due no later than 14 days after the comments are filed.

29. An original and four copies of all pleadings shall be filed with the Secretary of the Commission. In addition, parties shall serve with three copies: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5A-333, Washington, D.C. 20554, Attn: Nese Guendelsberger. Parties shall also serve with one copy: Qualex International, Portals II, 435 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-3893. Members of the general public who wish to express their views in an informal manner regarding the issues in this Order, Notice, and Erratum may do so by submitting one copy of their comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Such comments should specify the docket number of this proceeding, CC Docket No. 94-157. Parties are also strongly encouraged to submit their pleadings via the Internet through the Electronic Comment Filing System at <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is CC Docket No. **93-157**. Parties may also submit an electronic comment via Internet e-mail. To get filing instructions for e-

mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

50 Interested parties who view the comments via mail service are now notified that effective December 18, 2001, the Commission will only receive such deliveries weekdays from 8:00 a.m. to 7:00 p.m. at its contractor, Vistronix, Inc., located at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. **The Commission no longer accepts these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743.** Please note that all hand deliveries must be held together with rubber bands or fasteners, and envelopes must be disposed of before entering the building. In addition, this is a reminder that as of October 18, 2001, the Commission no longer accepts hand-delivered or messenger-delivered filings at its headquarters at 445 12th Street, SW, Washington, DC 20554. Messenger-delivered documents (e.g., FedEx), including documents sent by overnight mail (other than United States Postal Service (USPS) Express and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location is open weekdays from 8:00 a.m. to 5:30 p.m. USPS First-Class, Express, and Priority Mail should be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The following chart summarizes this information:

TYPE OF DELIVERY	PROPER DELIVERY ADDRESS
	Suite 110, Washington, DC 20002 (Weekdays - 8:00 a.m. to 7:00 p.m.)
Messenger-delivered documents (e.g., Federal Express) including documents sent by overnight mail (this type excludes USPS Express and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (Weekdays - 8:00 a.m. to 5:30 p.m.)
Mail	12 <sup>th</sup> Washington, DC 20554

<sup>64</sup> See 47 C.F.R. §1.1206(b)(2), as revised

20554, (202) 863-2893

**C. Paperwork Reduction Act**

34. This Order, Notice, and Erratum are hereby corrected to comply with the provisions of the Paperwork Reduction Act of 1995, Pub. Law 104-13.

**V. ORDERING CLAUSES**

35. Pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), by this Order, Notice, and Erratum, ~~the Termination Order~~ is corrected to reinstate as a pending proceeding CC Docket No. 94-157. All references to CC Docket No. 94-157 in the Appendix to the *Termination Order* are hereby DELETED.

36. IT IS also ORDERED that, pursuant to sections 4(i), 4(j), and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 204(a), Verizon Communications SHALL RESPOND to the issue B, designated in the *Combined OPEB Investigations Order*, no later than 45 days after release of this Order, Notice, and Erratum.

37. The Bureau WILL SEND a copy of this Order, Notice, and Erratum to the entities listed in the Appendix A.

FEDERAL COMMUNICATIONS COMMISSION

William F. Malier, Jr.  
Chief  
Wireline Competition Bureau

**APPENDIX A.**

Verizon Communications, Inc., (including Bell Atlantic Telephone Companies, GTE Telephone Operating Companies, GTE System Telephone Company, NYNEX Telephone Company)

ALLTEL Communications (including Lincoln Telephone Companies)

Frontier Telephone of Rochester, Inc., (including Rochester Telephone Corporation)

SBC Communications, Inc., (including Anieritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Company, Southwestern Bell Telephone Company)

Bell South Telecommunications, Inc.

Qwest Communications, Inc., (including U S West Communications, Inc.)

AT&T Communications

WorldCom Communications (including MCI Telecommunications Corporation.

Sprint Communications (including United and Central Telephone Companies, Centel Telephone Companies)

Ad Hoc Telecommunications Users Committee

Williams Communications, LLC., (including Williams Telecommunications Group, Inc.)

International Communications Association

United States Telecom Association